

GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION

BRODEUR/FUTURWISE, VINCE PANESKO
AND WASHINGTON STATE DEPARTMENT OF
COMMERCE,

Petitioners,

v.

BENTON COUNTY,

Respondent,

CITY OF WEST RICHLAND, THE ESTATE OF
THAYNE WISER, CLAYNE WISER, KURT
WISER, and TALON WISER,

Intervenors.

Case No. 09-1-0010c

ORDER FINDING COMPLIANCE
[Resolution 09-162: Rural Lands]

I. INTRODUCTION

On April 10, 2009, John Brodeur and Futurewise (Brodeur/Futurewise) filed a Petition for Review (PFR) which was assigned Case No. 09-1-0008. On April 23, 2009, Vince Panesko (Panesko) filed a PFR which was assigned Case No. 09-1-0009. On May 4, 2009, the State of Washington Department of Commerce (Commerce) filed a PFR which was assigned Case No. 09-1-0010. Petitioners challenged Benton County's adoption of Resolution 09-162, which re-designated approximately 1,120 acres of rural land from Rural One Dwelling Unit per Five Acres (RL-5) to Rural One Dwelling Unit per One Acre (RL-1) in the Richland – West Richland Rural Planning Area.

In accordance with RCW 36.70A.290(5), the Board consolidated the three PFRs as *Brodeur/Futurewise, et al v. Benton County*, EWGMHB Case Number 09-1-0010c. The Estate of Thayne Wiser, Clayne Wiser, Kurt Wiser, and Talon Wiser (collectively, Wiser or

Intervenors) sought and were granted intervention on behalf of Benton County's adoption of Resolution 09-162, which re-designated land owned, in part, by Wiser. As provided in WAC 242-02-270(3)(a), the Intervenors were limited to those issues in which they had an interest.

The Hearing on the Merits (HOM) was held on November 5, 2009, in Kennewick, Washington. Petitioners Brodeur/Futurewise were represented by Robert Beattey of Futurewise; Commerce was represented by Dorothy Jaffe; Vince Panesko appeared *pro se*. Benton County was represented by Ryan Brown. Intervenor Wiser was represented by John Ziobro.

At the Hearing on the Merits, Petitioners argued *inter alia* that Resolution 09-162 was non-compliant with the Growth Management Act (GMA) by allowing urban growth and sprawl to occur outside of the Urban Growth Area, by encouraging urban-level development without providing adequate public facilities and services, and by failing to protect rural character as provided for in the Benton County Comprehensive Plan and County-Wide Planning Policies.

On November 24, 2009, the Board issued its Final Decision and Order on the Rural Lands aspect of this consolidated case [Resolution 09-162] – i.e., Issue 1 and Issues 7 through 17 (inclusive) as set forth in the June 18, 2009 Prehearing Order.¹ The Board concluded that Resolution 09-162 failed to comply with certain sections of the GMA, the Benton County Comprehensive Plan, and County-Wide Planning Policies. The Board made a determination that particular parts of the Land Use Element of the Comprehensive Plan are invalid. Benton County was ordered to bring its Comprehensive Plan into compliance with the GMA by May 24, 2010.

II. DISCUSSION

Under RCW 36.70A.320(2), the burden is on the Petitioners to demonstrate that any action taken by the County under the GMA is not in compliance with the requirements of the GMA.

¹ The other issues in this consolidated case relating to Benton County Resolution 09-143, City of West Richland Urban Growth Area, were decided by the Board in a separate Final Decision and Order issued on December 2, 2009 and are subject to a separate compliance process.

1 The Board shall find compliance unless it determines that the action is clearly erroneous in
2 view of the entire record before the Board and in light of the goals and requirements of the
3 GMA. RCW 36.70A.320(3).

4 After proper notice to all parties, the Board conducted a telephonic Compliance Hearing on
5 July 13, 2010 at 10:00 a.m. Board Member Raymond Paoella was Presiding Officer, and
6 Board Members Joyce Mulliken and William Roehl participated as panel members.

7 Petitioners Brodeur/Futurewise were represented by Tim Trohimovich of Futurewise;
8 Commerce was represented by Assistant Attorney General Dorothy Jaffe; Vince Panesko
9 appeared *pro se*. Respondent Benton County was represented by Chief Deputy
10 Prosecuting Attorney Ryan Brown. Intervenors Wiser did not appear at the Compliance
11 Hearing.

12 On May 17, 2010, the Board of County Commissioners of Benton County adopted
13 Resolution 10-284 which rescinded the earlier Benton County action challenged in this case
14 – Resolution 09-162. This action amended the County's Comprehensive Plan to change the
15 designation for the area in question back to RL-5. Benton County's corrective legislative
16 actions followed a public hearing by the County Planning Commission and the receipt of
17 public testimony by the Benton County Board of County Commissioners on May 17, 2010.
18 The County requests that the Board enter an order of compliance. At the Compliance
19 Hearing, Petitioners had no objections and agreed that Benton County should be found in
20 compliance as to the rescission of Resolution 09-162 [Rural Lands].

21 The Board finds that by rescinding Resolution 09-162 and re-designating approximately
22 1,120 acres of rural lands back to RL-5 [one dwelling unit per five acres], Benton County is
23 in compliance with the GMA as to Issue 1 and Issues 7 through 17 in the Prehearing Order.
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III. ORDER

As to legal issues 1 and 7-17 (inclusive), Benton County’s rural lands designation is in compliance with the GMA.

Entered this 16 day of July, 2010.

Raymond L. Paoella, Board Member

Joyce Mulliken, Board Member

William Roehl, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. A response to a Motion for Reconsideration must be filed within 5 days of the filing of the motion.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).